

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.202(b)
 Table of Allotments
 FM Broadcast Stations
 (Charlotte and Jackson, Michigan)

)
) MB Docket No. _____
) RM - _____
)
)

To: Office of the Secretary
 Attn: Assistant Chief, Audio Division
 Media Bureau

DOCKET FILE COPY ORIGINAL

PETITION FOR RULE MAKING

Rubber City Radio Group ("Rubber City"), licensee of WJXQ(FM), Jackson, Michigan, by its counsel, hereby submits this Petition for Rule Making, which proposes to delete Channel 291B from Jackson, Michigan and allot Channel 291B to Charlotte, Michigan. Rubber City is filing this Petition only to maintain a first local service at Charlotte, Michigan. Specifically, this Petition will eliminate a potential conflict between (i) a proposal to change the community of license of WQTX(FM) from Charlotte, Michigan to Grand Ledge, Michigan in MB Docket No. 03-222, and (ii) a pending major change "application"¹ to change the community of license of WLCM(AM) from Charlotte, Michigan to Holt, Michigan. See BMJP-20040128AJX. If this Petition is granted, Rubber City will file an application for Channel 291B at Charlotte and construct the facilities as authorized. The following table summarizes the changes requested in this Petition:

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 List ABCDE
FM-MB
04-183

¹ The application is actually the engineering portion of Form 301 which is associated with the Form 175 auction submission. The Form 301 (long form) application has not yet been submitted.

City	Channel	
	Existing	Proposed
Jackson, Michigan	231B, 291B	231B
Charlotte, Michigan	224A	224A, 291B

I. Overview

1. On March 6, 2003, Rubber City filed a Petition for Rule Making, which is now MB Docket No. 03-222, to delete Channel 224A from Charlotte, Michigan and allot Channel 225A to Grand Ledge, Michigan as that community's first local service. In its Petition, Rubber City demonstrated that the community of Charlotte would not be deprived of its only local service because Station WLCM(AM) was licensed to Charlotte. Thereafter, on October 24, 2003, the Commission released a *Notice of Proposed Rule Making* to amend the FM Table of Allotments pursuant to Rubber City's Petition. *See* 18 FCC Rcd 21867 (2003). On December 15, 2003, Christian Broadcasting System, LTD. ("Christian Broadcasting"), licensee of WLCM(AM) filed comments in MB Docket No. 03-222 indicating that it was planning on filing an application to move WLCM(AM) from Charlotte, Michigan to Holt, Michigan in an upcoming AM major change window. Subsequently, on January 28, 2004, Christian Broadcasting filed its major change application for WLCM. *See* BMJP-20040128AJX. Therefore, the Commission must now decide whether to grant Rubber City's proposal or Christian Broadcasting's application to avoid leaving Charlotte without local service.

2. The Commission has never faced this exact situation; where a petition is filed to change the community of license of a FM station and the old community retains local service from an AM station. Then, the AM station files a "conflicting" proposal² indicating that it will file, and ultimately does file, a major change application to change its community of license and

² The two proposals are not in technical conflict but would conflict with the Commission's policy of maintaining local service where a change in community of license is requested.

the community at issue is ultimately deprived of all local service. Current Commission rules and case law do not give clear guidance on the resolution of this situation and any decision that is reached is likely to be appealed. However, by granting Rubber City's proposal in the instant Petition for Rule Making, the Commission will not be forced to decide a case of first impression because Charlotte will retain local service. Therefore, Rubber City respectfully requests that the Commission *expedite* the release of a *Notice of Proposed Rule Making* in this proceeding.³ As discussed below, Rubber City's proposal in this proceeding does not involve any technical changes to the facilities of WJXQ(FM) and therefore Rubber City can provide service to Charlotte immediately upon being granted an authorization for Charlotte.

3. Rubber City is only filing this Petition for Rule Making to facilitate a solution in MB Docket No. 03-222 as discussed above. If the Commission decides not to grant Rubber City's proposal in MB Docket No. 03-222, then Rubber City respectfully requests that the Commission return and not consider the instant Petition for Rule Making.

II. Station WJXQ(FM), Jackson to Charlotte, Michigan

4. As demonstrated in the Engineering Statement, Channel 291B can be allotted to Charlotte at WJXQ's current coordinates of 42-23-28 North Latitude, 84-37-22 West Longitude consistent with Section 73.207 of the Commission's Rules with respect to all existing and proposed domestic allotments and facilities, with the exception of certain grandfathered short spaced allotments as explained below. *See* Table 1. A 70 dBu signal can be provided to Charlotte from the current reference coordinates. *See* Figure 1. Because WJXQ's facilities will

³ In a separate pleading filed contemporaneously in MB Docket No. 03-222, Rubber City and Christian Broadcasting are requesting that the Commission hold MB Docket No. 03-222 and Christian Broadcasting's major change application for WLCM in abeyance so that this Petition can be processed and consolidated with MB Docket No. 03-222 in order to foster a resolution in that proceeding.

not be relocated or modified, there will be no change in population and area served. Jackson will continue to receive 5 local services, and will thus remain well served.

5. The Engineering Statement reveals that at its current location, WJXQ is short-spaced to two stations, WDTJ(FM) (Channel 290B) and WQLR(FM) (Channel 293B). See Table 1. The short spacing to WDTJ(FM) was created prior to November 16, 1964 and the stations have remained continuously short spaced since then. The short spacing to WQLR(FM) was created when the minimum distance separation requirements for Class A stations were modified. Accordingly, these short spacings are governed by Section 73.213 of the Commission's Rules. The Commission has held that a station with pre-1964 short spacings under Section 73.213 may change its community of license so long as (i) no additional short-spacing is created, (ii) no existing short-spacing is exacerbated, and (iii) the potential for interference between currently short spaced stations is not increased. See *Kankakee and Park Forest, Illinois*, 16 FCC Rcd 6768, 6768 (2001); *Killeen and Cedar Park, Texas*, 15 FCC Rcd 1945, 1945-46 (2000); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302, 15304 (1999); *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307, 6308 (1992). These conditions are met here since this proposal requires no change to WJXQ's transmitter site or facilities.

6. Rubber City desires to change the community of license of WJXQ from Jackson to Charlotte under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and

(3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, the proposed use of Channel 291B at Charlotte is mutually exclusive with the current use of Channel 291B at Jackson. *See* Table 1. Second, Jackson will not be deprived of its only local service because 5 other stations are licensed to Jackson. Third, the Commission's allotment priorities do not apply here because Rubber City is only filing this Petition to maintain local service at Charlotte. In Rubber City's proposal in MB Docket No. 03-222, the establishment of first local service at Grand Ledge (2000 U.S. Census population 7,813) under Priority 3 will result in a preferential arrangement of allotments over the retention of a second local services at Charlotte (2000 U.S. Census population 8,389) under Priority 4. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In addition, a first local service could be provided to Holt, Michigan by virtue of the AM application of Christian Broadcasting.

7. WJXQ is currently licensed at Jackson, which is located within the Jackson, Michigan Urbanized Area, and WJXQ currently serves 100% of the Jackson, Michigan Urbanized Area. Charlotte is not located in an Urbanized Area, and the proposed 70 dBu contour of WJXQ will still cover 100% of the Jackson, Michigan Urbanized Area because its facilities will not be modified. Therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas, especially considering that WJXQ is moving to a community located outside the Jackson, Michigan Urbanized Area. *See, e.g., Dayton, Incline Village and Reno, Nevada*, 15 FCC Rcd 22461, 22462 (2000); *St. Maries, Idaho and Spokane, Washington*, 14 FCC Rcd 17012, 17019 (1999); *Boulder and Lafayette, Colorado*, 12 FCC Rcd 583, 584 (1997); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). Further, there is no question

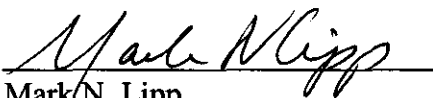
that Charlotte qualifies as a community independent of Jackson because two stations (WLCM(AM) and WQTX(FM)) have been licensed there.

III. **Conclusion**

For the foregoing reasons Rubber City respectfully requests that the Commission expedite the release of a *Notice of Proposed Rule Making* in this proceeding. This will facilitate a resolution in MB Docket No. 03-222 and provide first local service at Grand Ledge and Holt, Michigan. However, if the Commission decides not to grant Rubber City's proposal in MB Docket No. 03-222, then Rubber City respectfully requests that the Commission return and not consider the instant Petition for Rule Making.

Respectfully submitted,

RUBBER CITY RADIO GROUP

By: 
Mark N. Lipp
Scott Woodworth
Vinson & Elkins L.L.P.
1455 Pennsylvania Ave, NW
Suite 600
Washington, DC 20004-1008
(202) 639-6500

Its Counsel

November 5, 2004

ENGINEERING STATEMENT IN
SUPPORT OF PETITION
FOR RULEMAKING
CHANNEL 291B - CHARLOTTE, MI

Rubber City Radio Group
Jackson, MI

November 2, 2004

Prepared For: Mr. Thomas Mandel
Rubber City Radio Group
1795 West Market Street
Akron, OH 44313

CARL E. SMITH CONSULTING ENGINEERS

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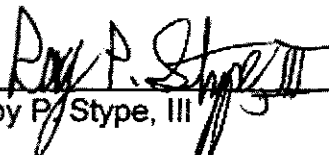
Fig. 1.0 - Present WJXQ City Grade Contour

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by the Rubber City Radio Group to prepare the attached "Engineering Statement In Support Of Petition For Rulemaking - Channel 291B - Charlotte, MI."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **November 2, 2004**.



Notary Public

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 5, 2005

/SEAL/

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of the Rubber City Radio Group, licensee of Radio Station WJXQ(FM) - Jackson, Michigan, which presently operates on Channel 291B. It supports a petition to amend the FM Table of Allotments to change WJXQ's community of license to Charlotte, Michigan. The data contained in this exhibit shows that Channel 291B can be reallocated from Jackson, Michigan to Charlotte, Michigan, for use by WJXQ with no relocation of the WJXQ transmitter site and no modifications to the present WJXQ operating facilities. Changing the WJXQ community of license from Jackson to Charlotte would eliminate the conflict between the proposal in MB Docket 03-222 to change the community of license of WQTX(FM) - Charlotte, Michigan to Grand Ledge, Michigan and the pending "short form" major change application (BMJP-20040128AJX) of WLCM(AM) - Charlotte, Michigan proposing to change the WLCM community of license to Holt, Michigan by insuring that Charlotte is not left devoid of local aural service if both of these other proposals are ultimately granted.

The geographic reference coordinates for Charlotte are:

NL - 42° 33' 48"
WL - 84° 50' 08"

This places Charlotte within Zone I, as defined by Section 73.205(c) of the FCC Rules. Accordingly, as outlined in Section 73.210(a) of the FCC Rules, the allotment of a Class B Channel to Charlotte is permitted. The present WJXQ transmitter site is located 25.9 kilometers southeast of Charlotte, at the following coordinates:

NL - 42° 23' 28"
WL - 84° 37' 22"

This site also falls within Zone I, permitting the continued operation of WJXQ a Class B facility from this site.

Table 1.0 is an FM spacing study for Channel 291B which was conducted from the present WJXQ transmitter site. As shown in this table, WJXQ is presently short spaced to two other stations requiring protection consideration:

WDTJ	Detroit, MI	Channel 290B
WQLR	Kalamazoo, MI	Channel 293B

As outlined below, however, pursuant to the FCC's 1992 decision in *Newnan and Peachtree City, Georgia*, neither of these existing short spacings should be an impediment to the proposed reallocation of Channel 291B from Jackson to Charlotte since both of these short spacings are grandfathered existing short spacings and no changes are proposed in the presently licensed WJXQ transmitter site or operating facilities.

The short spacing to WDTJ is a pre-1964 grandfathered short spacing subject to the provisions of Section 73.213(a) of the FCC Rules. As a result, since no modifications are being proposed to the presently licensed WJXQ operating facilities, it is obvious that the proposed WJXQ facilities comply with the protection requirements outlined in Section 73.213(a) of the FCC Rules with regard to WDTJ. Thus, pursuant to the 1992 decision in *Newnan and Peachtree City, Georgia*, WJXQ is eligible to invoke the provisions of Section 1.420(i) of the FCC Rules to propose a change in its community of license in spite of the grandfathered short spacing to WDTJ.

The short spacing to WQLR is the result of the action by the FCC in BC Docket 80-90 which increased the spacing requirement for this channel relationship from 40 miles (64.4 kilometers) to 74 kilometers. Pursuant to FCC policy, this grandfathered short spacing imposes no restrictions on the permitted WJXQ operating facilities so

long as the proposed modifications do not reduce the spacing between WJXQ and WQLR below its present value (71.9 kilometers). As a result, since no modifications are being proposed to the presently licensed WJXQ operating facilities, it is obvious that the proposed WJXQ facilities comply with the applicable protection requirements with regard to WQLR. Thus, WJXQ should also be eligible to invoke the provisions of Section 1.420(i) of the FCC Rules to propose a change in its community of license in spite of the grandfathered short spacing to WQLR.

Figure 1.0 is a map exhibit depicting the predicted 3.16 mV/m contour for the presently licensed operation¹ of WJXQ. This contour was projected utilizing the notified WJXQ operating facilities from the FCC's Consolidated Database System ("CDBS") assuming uniform terrain. As shown in this figure, the present WJXQ 3.16 mV/m contour encompasses the entire city of Charlotte. Thus, operation with the present WJXQ operating facilities would provide the required city grade coverage to Charlotte.

It should be noted that, although Jackson is wholly located within, and is the core city of, the Jackson, Michigan Urbanized Area, Charlotte is not located, either wholly or partially, in any urbanized area, as defined by the 2000 U. S. Census. Furthermore, although the present WJXQ city grade contour encompasses 100% of the Jackson, Michigan Urbanized Area and a small portion (approximately 17%) of the Lansing, Michigan Urbanized Area, the proposed reallocation of Channel 291B to Charlotte will not increase the city grade coverage of either of these urbanized areas, since it is pro-

¹WJXQ presently is authorized to operate with a nondirectional effective radiated power of 50 kilowatts at 149 meters above average terrain, which is just slightly less than the maximum Class B facilities of 50 kilowatts at 150 meters above average terrain which are normally utilized to evaluate principal community coverage for a Class B station at the allotment stage. The use of these slightly lower facilities in this situation makes very little difference in the predicted principal community contour, but does insure that the present WJXQ operating facilities will be capable of providing the required principal community coverage to all of Charlotte.

posed to continue to operate with the presently licensed WJXQ operating facilities following the reallocation of this channel to Charlotte. Thus, no showing should be required to document the independence of Charlotte from either of these urbanized areas.

Charlotte (population 8389²) presently receives local service from WQTX(FM) and WLCM(AM). Thus, the proposal outlined herein, by itself, would provide Charlotte with its third local service. It should be noted, however, that WQTX has proposed in MM Docket 03-222 to change its community of license to Grand Ledge, Michigan (population 7813), to which it would provide a first local service. Additionally, WLCM has filed a "short form" major change application (BMJP-20040128AJX) proposing to change its community of license to Holt, Michigan (population 11,315), which would receive a first local service from the proposed WLCM modifications. Without the proposed reallocation of Channel 291B from Jackson to Charlotte, however, it is unlikely that both the WQTX proposal and the WLCM proposal could be granted, since this would leave Charlotte devoid of local service. Thus, the reallocation of Channel 291B to Charlotte would permit both Grand Ledge and Holt to receive a first local service while still leaving WJXQ to provide local service in Charlotte. The deletion of Channel 291B would not deprive Jackson (population 36,316) of its only local service, as it would continue to receive local service from five other existing stations³.

Since WJXQ will continue to operate with its presently licensed facilities following the reallocation of Channel 291B to Charlotte, there will be no gain or loss area created

²All population data in this exhibit is extracted from the 2000 U. S. Census.

³WIBM(AM), WJKN(AM), WKHM(AM), WJKQ(FM), and WVIC(FM).

by this proposed reallocation. Thus, there is no need to submit detailed information regarding the area and population of such gain and loss areas or the number of other full time aural services which would exist in such gain and loss areas.

In summary, Channel 291B can be reallocated from Jackson, Michigan to Charlotte, Michigan to permit the WJXQ license to be modified to specify Charlotte as its community of license. This proposed reallocation will permit the presently conflicting proposals to move WQTX(FM) from Charlotte to Grand Ledge, Michigan and to move WLCM(AM) from Charlotte to Holt, Michigan to both be granted, providing a first local service to both Grand Ledge and Holt, without leaving Charlotte devoid of local service.

TABLE 1.0

FM ALLOCATION STUDY
CHANNEL 291B - CHARLOTTE, MI
 Rubber City Radio Group
 Jackson, MI

<u>Station</u>	<u>Location</u>	<u>Channel</u>	<u>Class</u>	<u>Spacing (km)</u>	<u>Required Spacing (km)</u>
WBXX	Battle Creek, MI	237	A	46.13	15
WQTE	Adrian, MI	237	A	78.68	15
WKQI	Detroit, MI	238	B	117.46	20
WTHD	Lagrange, IN	288	A	104.27	69
WWCK-FM ¹	Flint, MI	288	B1	105.25	71
WWWM-FM	Sylvania, OH	288	A	118.02	69
WOOD-FM	Grand Rapids, MI	289	B	79.93	74
WZOM	Defiance, OH	289	A	131.34	69
WDTJ ²	Detroit, MI	290	B	117.35	169
WJOT-FM	Wabash, IN	290	A	199.48	113
WCKG	Elmwood Park, IL	290	B	255.50	169
WHST	Tawas City, MI	291	C3	223.15	211
WVNO-FM	Mansfield, OH	291	B	246.22	241
WMIL-FM	Waukesha, WI	291	B	279.57	241
WSCG-FM	Lakeview, MI	292	A	124.66	113
WGER ^{1,3}	Saginaw, MI	292	A	132.45	113
WGER	Saginaw, MI	292	A	132.57	113
WDDB ¹	Columbia City, IN	292	A	139.33	113
WUBU ¹	South Bend, IN	292	A	156.54	113
WUBU ^{1,4}	South Bend, IN	292	A	156.55	113
WBUK	Ottawa, OH	292	A	170.05	113
WQLR ²	Kalamazoo, MI	293	B	71.93	74
WRWK ¹	Delta, OH	293	A	116.64	69
WFJZ	Hicksville, OH	294	A	119.12	69
WDTW	Detroit, MI	294	B	130.15	74

NOTES:

- 1 - Facilities applied for under Section 73.215 of the FCC Rules.
- 2 - Short spaced.
- 3 - Construction permit.
- 4 - Pending application.

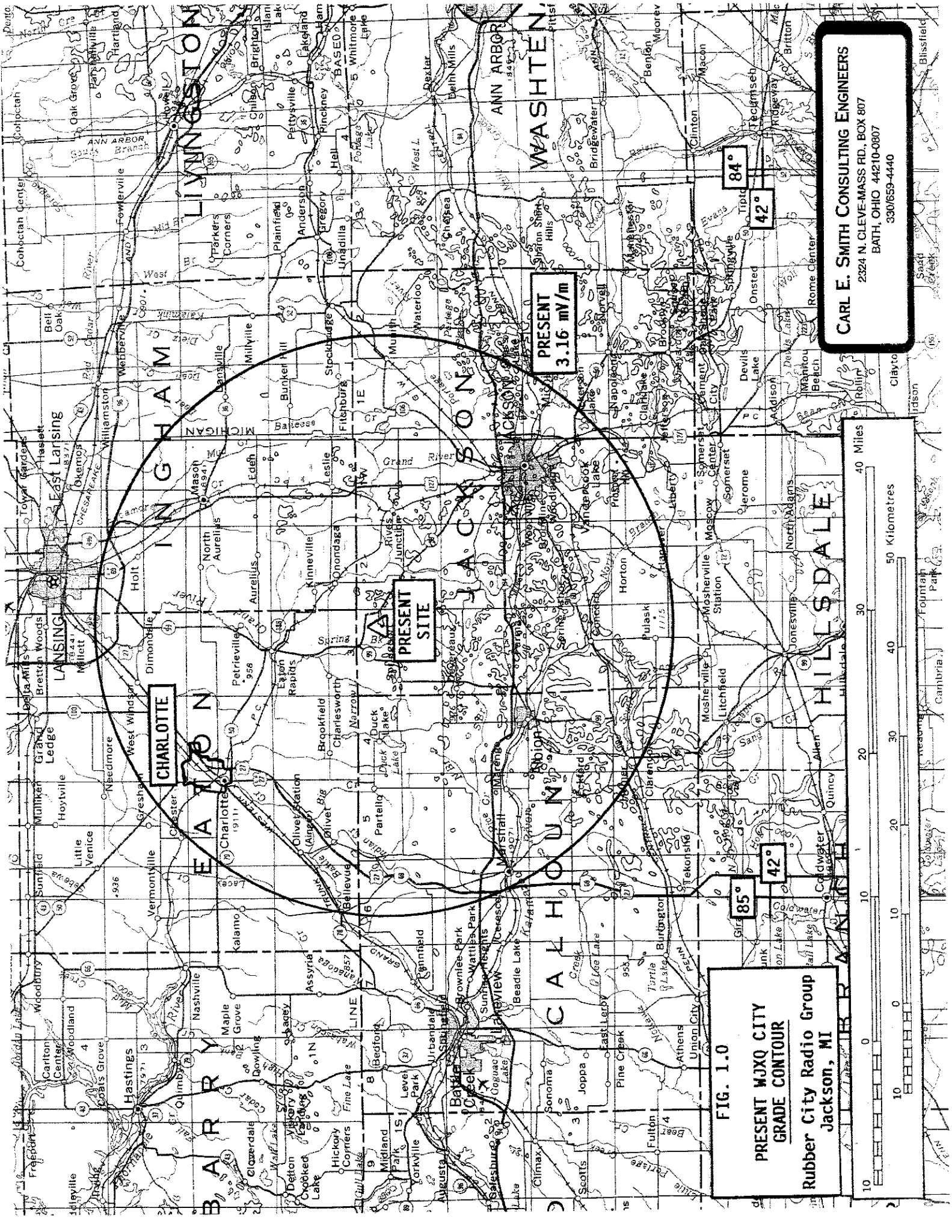


FIG. 1.0
PRESENT WJXQ CITY
GRADE CONTOUR
Rubber City Radio Group
Jackson, MI

CARL E. SMITH CONSULTING ENGINEERS
2324 N. CLEVELAND RD., BOX 807
BATH, OHIO 44210-0807
330/659-4440

CERTIFICATE OF SERVICE

I, Lisa M. Holland, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 5th day of November, 2004, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Petition for Rule Making**" to the following:

*R. Barthen Gorman, Esq.
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Federal Communications Commission
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Washington, D.C. 20554

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1156 15th Street, NW
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Washington, DC 20005
(Counsel to Christian Broadcasting System, LTD)


Lisa M. Holland

* Via Hand Delivery